



FARM CREDIT ADMINISTRATION

12 CFR Part 627

RIN 3052-AD46

Title IV Conservators and Receivers

AGENCY: Farm Credit Administration.

ACTION: Direct final rule.

SUMMARY: The Farm Credit Administration (FCA, we, or our) issues this direct final rule to repeal certain regulations in part 627 that have been superseded by section 5412 of the Agricultural Improvement Act of 2018 (2018 Farm Bill), which strengthens, clarifies, and updates the authorities of the Farm Credit System Insurance Corporation (FSCIC or Insurance Corporation) to act as a conservator or receiver of a Farm Credit System (FCS or System) institution.

DATES: If no significant adverse comment is received on or before [INSERT DATE THAT IS 30 DAYS AFTER PUBLICATION IN THE Federal Register], this regulation shall become effective no earlier than the expiration of 30 days after publication in the **Federal Register** during which either or both Houses of Congress are in session. Pursuant to 12 U.S.C. 2252(c)(1), FCA will publish notification of the effective date in the Federal Register.

ADDRESSES: For accuracy and efficiency reasons, please submit comments by e-mail or through FCA's Web site. We do not accept comments submitted by facsimiles (fax), as faxes

are difficult for us to process and achieve compliance with section 508 of the Rehabilitation Act of 1973. Please do not submit your comment multiple times via different methods. You may submit comments by any of the following methods:

- E-mail: Send us an e-mail at reg-comm@fca.gov.
- FCA Web site: <http://www.fca.gov>. Click inside the "I want to..." field near the top of the page; select "comment on a pending regulation" from the dropdown menu; and click "Go." This takes you to an electronic public comment form.
- Mail: Kevin J. Kramp, Director, Office of Regulatory Policy, Farm Credit Administration, 1501 Farm Credit Drive, McLean, VA 22102-5090.

You may review copies of comments we receive on our Web site at <http://www.fca.gov>. Once you are on the Web site, click inside the "I want to..." field near the top of the page; select "find comments on a pending regulation" from the dropdown menu; and click "Go." This will take you to the Comment Letters page where you can select the regulation for which you would like to read the public comments.

We will show your comments as submitted, including any supporting data provided, but for technical reasons we may omit items such as logos and special characters. Identifying information that you provide, such as phone

numbers and addresses, will be publicly available.

However, we will attempt to remove e-mail addresses to help reduce Internet spam. You may also review comments at our office in McLean, Virginia. Please call us at (703) 883-4056 or email us at reg-comm@fca.gov to make an appointment.

FOR FURTHER INFORMATION CONTACT:

Technical information: Ryan Leist, LeistR@fca.gov, Senior Accountant, or Jeremy R. Edelstein, EdelsteinJ@fca.gov, Associate Director, Finance and Capital Markets Team, Office of Regulatory Policy, Farm Credit Administration, McLean, VA 22102-5090, (703) 883-4414, TTY (703) 883-4056 or ORPMailbox@fca.gov; or

Legal information: Richard Katz, KatzR@fca.gov, Senior Counsel, Office of General Counsel, Farm Credit Administration, McLean, VA 22102-5090, (703) 883-4020, TTY (703) 883-4056.

SUPPLEMENTARY INFORMATION:

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I. Objective

The objective of this direct final rule is to repeal regulatory provisions in part 627 that have been superseded by section 5412 of the 2018 Farm Bill.

II. Background

On December 20, 2018, President Trump signed the 2018 Farm Bill into law.¹ Section 5142 of the 2018 Farm Bill added a new section 5.61C to the Farm Credit Act of 1971, as amended (Act).² This new statutory provision strengthens, clarifies, and updates the powers and duties of FCSIC after FCA has appointed it as the conservator or receiver of a FCS institution.³ Additionally, section 5.61C of the Act enhances FCSIC's authority to handle claims by various parties against a System institution in conservatorship or receivership. FCSIC's new statutory conservatorship and receivership authorities are comparable to those of the Federal Deposit Insurance Corporation, National Credit Union Administration, and Federal Housing Finance Agency.⁴

¹ Pub. L. 115-334, 132 Stat. 4490, (Dec. 20, 2018).

² Section 5.61C of the Act is codified at 12 U.S.C. 2277a-10c. The Act is available at www.fca.gov under "Laws and regulations," and "Statutes."

³ Section 4.12(b) of the Act requires FCA to appoint FCSIC as the conservator or receiver of an FCS bank, association, service corporation, or the Federal Farm Credit Banks Funding Corporation. Section 8.41(c)(1)(A) allows, but does not require, FCA to appoint FCSIC as the conservator or receiver of the Federal Agricultural Mortgage Corporation (Farmer Mac).

⁴ See Conf. Report No. 115-1072, 115th Cong., 2nd Sess., (Dec. 10, 2018) p. 648.

FCA is revising its regulations in part 627 so they are consistent with section 5412 of the 2018 Farm Bill. FCA is issuing this direct final rule that repeals several regulations in part 627 that are now inconsistent with provisions in section 5.61C of the Act pertaining to FCSIC's authority to administer conservatorships and receiverships of FCS institutions. FCA may address the following issues in subsequent rulemakings: (1) voluntary liquidation of System institutions under section 4.12(a) of the Act; (2) FCA appointment of conservators and receivers pursuant to section 4.12(b) of the Act; and (3) chartering and dissolving bridge banks in accordance with section 5.61C(h) of the Act.

III. Repeal of Regulations Superseded by Statutory

Amendments

FCA is rescinding, in their entirety, nine (9) regulations in subpart B and one regulation in subpart C of part 627 pertaining to the receivership or conservatorship of System institutions. New section 5.61C of the Act has strengthened, clarified, and updated FCSIC's conservatorship and receivership authorities, thereby superseding and rendering these ten (10) regulations obsolete. More specifically, this direct rule rescinds:

- 12 CFR 627.2725 Powers and duties of the receiver
 - sets forth the powers and duties of the receiver of a System institution.

- 12 CFR 627.2726 Treatment by the conservator or receiver of financial assets transferred in connection with a securitization or participation - defines beneficial interests, financial assets, participation, securitization, and special purpose entity. It describes the treatment of financial assets transferred in connection with a securitization or participation in a conservator or receiver.
- 12 CFR 627.2730 Preservation of equity - provides that no capital stock, participation certificates, equity reserves, or other allocated equities of an institution in receivership will be issued, allocated, retired, sold, distributed, transferred, assigned, or applied against any indebtedness of the owners of such equities. This regulation confirms that borrower stock must be retired in accordance with section 4.9A of the Act.
- 12 CFR 627.2740 Creditors' claims - describes the requirements to provide notice to creditors, the allowance and disallowance of claims, and the procedures for handling certain claims.
- 12 CFR 627.2745 Priority of claims—associations - describes the priority of claims for the

distribution of the assets of an association in liquidation.

- 12 CFR 627.2750 Priority of claims—banks - describes the priority of claims for the distribution of the assets of a bank in liquidation.
- 12 CFR 627.2752 Priority of claims – other Farm Credit institutions - describes the priority of claims for the distribution of the assets of a System institution other than an association or bank.
- 12 CFR 627.2755 Payment of claims - describes the payment of claims and if there are insufficient funds to pay any class of claims in full, distribution for that class of claims will be handled on a pro rata basis.
- 12 CFR 627.2760 Inventory, audit, and reports - describes inventory, audit, and reporting requirements for the receiver upon possession, annually, and upon final liquidation.
- 12 CFR 627.2780 Powers and duties of conservators - describes the powers and duties of the conservator to conduct its operations for the benefit of the creditors and stockholders of the institution.

As noted earlier, section 5412 of the 2018 Farm Bill, which added section 5.61C to the Act, enhanced, clarified, and updated FCSIC's powers to conduct conservatorships and receiverships of System institutions. More specifically, various provisions in section 5.61C(b)(2) of the Act include authorization for FCSIC to: (1) operate any System institution in conservatorship or receivership, (2) function as the institution's board of directors, officers, members, and stockholders, (3) use proceeds collected from the performance of contracts and sale of assets to pay valid claims, and (4) receive, determine, and settle claims, and set the priority of claims in accordance with the statute. Furthermore, sections 5.61C(b)(1), (b)(4), and (b)(10)(C) of the Act expressly authorize FCSIC to prescribe regulations regarding the conduct of conservatorships and receiverships, and the allowance, disallowance, and resolution of claims in receivership.

Section 5.61C(b)(15)(B) of the Act states that FCSIC shall make an annual accounting or report about each conservatorship or receivership available to the FCA Board. Providing an annual accounting or report to FCA is currently required by § 627.2760, which is among the regulations that we are rescinding. Pursuant to the Act, FCA is able to obtain necessary annual accounting or reports from FCSIC.

This direct final rule is not rescinding subpart A, §§ 627.2720, 627.2735, or 627.2765 in subpart B, or §§ 627.2770, 627.2775, 627.2785, or 627.2790 in subpart C of part 627 because these regulations implement section 4.12(b) of the Act which authorizes FCA to appoint FCSIC as the receiver or conservator of System institutions. Similarly, we are not repealing subpart D of part 627 which governs our authority to supervise and regulate the voluntary liquidation of a System institution without a receiver. FCA may revise or update these regulations in a subsequent rulemaking. We may also engage in a rulemaking that implements section 5.61C(h) of the Act, which governs the chartering, termination, and dissolution of System bridge banks that enable FCSIC to handle the resolution of one or more distressed FCS institutions.

IV. Direct Final Rule

For the reasons discussed above, we are rescinding the above-referenced sections of part 627 subparts B (Receivers and Receiverships) and C (Conservators and Conservatorships) by direct final rulemaking. The Administrative Conference of the United States recommends direct final rulemakings for Federal agencies to enact noncontroversial regulations on an expedited basis, without the usual notice and comment period.⁵ This process enables

⁵ Recommendation 95-4, referencing the Administrative Procedure Act "good cause" exemption at 5 U.S.C. 553(b) (B), adopted June 15, 1995.

us to reduce the time and resources we need to develop, review, and publish a final rule while still affording the public an adequate opportunity to comment or object to the rule.

In a direct final rulemaking, we notify the public that the rule will become effective on a specified date unless we receive a significant adverse comment during the comment period. A significant adverse comment is one where the commenter explains why the rule would be inappropriate (including challenges to its underlying premise or approach), ineffective, or unacceptable without a change. In general, a significant adverse comment would raise an issue serious enough to warrant a substantive response from the FCA in a notice-and-comment proceeding.

We believe that a direct final rulemaking is the appropriate method for rescinding above-referenced sections in subparts B and C of part 627 that are superseded by the 2018 Farm Bill. We do not anticipate there will be significant adverse comments because this direct final rule implements recent statutory amendments governing FCSIC's numerous powers and duties as the conservator or receiver of System institutions. If, however, we receive a significant adverse comment during the comment period, we will publish in the Federal Register a notice of withdrawal of the relevant provisions of this rule that will also indicate how the agency plans to proceed. If we receive no

significant adverse comments, we will publish notice of the effective date of the rule following the required congressional waiting period under section 5.17(c)(1) of the Act.

V. Regulatory Flexibility Act Analysis and Major Rule Conclusion

Pursuant to section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 et seq.), FCA hereby certifies that the direct final rule would not have a significant economic impact on a substantial number of small entities. Each of the banks in the Farm Credit System, considered together with its affiliated associations, has assets and annual income in excess of the amounts that would qualify them as small entities. Therefore, Farm Credit System institutions are not "small entities" as defined in the Regulatory Flexibility Act.

Under the provisions of the Congressional Review Act (5 U.S.C. 801 *et seq.*), the Office of Management and Budget's Office of Information and Regulatory Affairs has determined that this direct final rule is not a "major rule," as the term is defined at 5 U.S.C. 804(2).

List of Subjects in 12 CFR Part 627

Agriculture, Banks, Banking, Claims, Rural areas.

For the reasons stated in the preamble, part 627 of chapter VI, title 12 of the Code of Federal Regulations are amended as follows:

**PART 627-- TITLE IV CONSERVATORS, RECEIVERS, AND
VOLUNTARY LIQUIDATIONS**

1. The authority citation for part 627 continues to read as follows:

Authority: Secs. 4.2, 5.9, 5.10, 5.17, 5.51, 5.58, 5.61 of the Farm Credit Act (12 U.S.C. 2183, 2243, 2244, 2252, 2277a, 2277a-7, 2277a-10).

**§§ 627.2725, 627.2726, 627.2730, 627.2740, 627.2745, 627.2750, 627.2752, 627.2755, 627.2760, and 627.2780
[Removed and Reserved]**

2. Sections 627.2725, 627.2726, 627.2730, 627.2740, 627.2745, 627.2750, 627.2752, 627.2755, 627.2760, and 627.2780 are removed and reserved.

Dated: March 17, 2021. Dale Aultman,
Secretary,
Farm Credit Administration Board.